

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JERRY WAYNE ROSE,)
)
 Petitioner,)
)
 v.) 1:12CV964
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

On March 13, 2013, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner and Respondent have both stipulated that no objections to the Recommendation will be filed. (See Notice [Doc. #37].) Therefore, the Court need not make a *de novo* review and the Magistrate Judge's Recommendation [Doc. #35] is hereby adopted.

IT IS THEREFORE ORDERED that Petitioner's Motion to Vacate, Set Aside or Correct Sentence [Doc. #23] is DENIED as to his claim that his conviction is no longer valid, but is GRANTED as to his request for resentencing, and the Judgment [Doc. #12] is VACATED. The Clerk is directed to set this matter for resentencing. Petitioner remains in custody and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement to the Presentence Investigation

Report in advance of the hearing. Counsel will be appointed to represent Petitioner at the resentencing hearing.

This the 25th of March, 2013.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge